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The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Center for Quality Assurance and Control
10 West Street, Boston, MA 02111
617-753-8000

CIRCULAR LETTER: DHCQ 12-04-447

TO: Long-Term Care Facility Administrators

FROM: Paul I. Dreyer, Ph.D., Associate Commissioner

A handwritten signature in dark ink, appearing to be 'PD', located to the right of the 'FROM' line.

DATE: January 4, 2005

RE: Revisions to Circular Letter of Dec. 20, 2004: Family Councils in Nursing Homes

Please note that this circular letter replaces the version dated Dec. 20, 2004.

The purpose of this letter is to advise nursing facilities of new requirements governing the establishment and empowerment of resident councils resulting from recent amendments to Mass General Laws. (Sec. 155 of H. 4850, Conference Report on the FY05 State Budget; see Attachment A) Nursing facilities are advised to follow the new requirements as they relate to the formation and operation of nursing facility family councils. In implementing these requirements, administrators must keep their patients' safety and quality of care as their primary care concerns. The amendment, which has already become effective, contains the following mandates:

- Upon request a licensed facility must allow the formation of a family council and must allow the family council to meet in a common meeting room of the facility during agreed upon hours.
- Upon a resident's admission, the facility must inform family members of their right to form a family council. When a family council exists, the facility must notify a new resident's family members (or representatives) about the family council and provide the time, place and date of meeting as well as the name of a family council contact person.
- The facility may not deny a family council the opportunity to accept organizational help from a group or individual outside of the facility.
- Facility policies on family councils may not limit the rights of residents, family members or family council members to meet independently with outside persons.

- The facility may not interfere with the family council's receipt of outside correspondence addressed to it, and must ensure that correspondence is delivered unopened to the governing body or contact person for the council.
- Staff or visitors may attend family council meetings only if invited by the council.
- The facility shall provide a staff member to assist families upon request of the council, and to respond to written requests from the family council.
- The facility shall consider the views and shall act upon the family council's grievances and recommendations concerning proposed policy and operational decisions that affect resident care and quality of life.
- The facility shall respond in writing within five working days to the family council's written requests or concerns.
- No facility shall willfully interfere with the formation, maintenance or promotion of a family council. Examples of willful interference include scheduling facility events that conflict with previously scheduled family council meetings or retaliating in any way against an individual for his or her participation in a family council.

Compliance with this new law will be determined at the time of an annual survey or any other inspection or complaint investigation. If you have any questions about the new statute, please call Jill Mazzola, Assistant Director, at 617-753-8106.

ATTACHMENT A

SECTION 155. Said chapter 111 is hereby amended by adding after section 72Y the following section:—

Section 72Z. (a.) No licensed skilled nursing facility or intermediate care facility may prohibit the formation of a family council and when requested by a member of the resident's family or the resident's representative, the family council shall be allowed to meet in a common meeting room of the facility at least once a month during the mutually agreed upon hours.

(b.) For the purpose of this section "Family council" means a meeting of family members, friends or representatives of 2 or more residents to confer in private without facility staff.

(c.) The facility will inform family members upon the admission of a resident of their right to form a family council. The facility shall not deny a family council the opportunity to accept help from an organization or individual outside of the facility.

(d.) Facility policies on family councils shall in no way limit the rights of residents, family members, and family council members to meet independently with outside persons.

(f.) The facility shall not prevent or interfere with the family council receiving outside correspondence which is addressed to the council. Family council mail shall be delivered unopened to the governing body or contact person of the council.

(g.) Staff or visitors may attend family council meetings at the group's invitation.

(h.) The facility shall provide a designated staff person who shall be responsible for providing assistance to the family council, if requested by the council, and responding to written requests that result from family council meetings.

(i.) The facility shall consider the views and act upon the grievances and recommendations of the family council concerning proposed policy and operational decisions affecting residents care and life at the facility.

(j.) The facility shall respond in writing to written requests or concerns of the family council within 5 working days.

(k.) When a family council exists during the admission process, the facility shall inform family members or representatives of new residents, who are identified on the admissions agreement, or in the resident's records, of the existence of a family council. The notice shall include the time, place and date of meeting and the person to contact regarding involvement in the family council.

(l.) No facility shall willfully interfere with the formation, maintenance or promotion of family council. The willful interference with a family council shall include, but not be limited to, discrimination or retaliation in any way against an individual as a result of his/her participation in a family council or the willful scheduling of facility events in conflict with previously scheduled family council meetings.

(m.) A violation of this section will constitute a violation of resident rights. The Department of Public Health shall impose a civil penalty upon any person who violates this section and shall promulgate such regulations as may be necessary to implement this section.